UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,861	08/09/2001	David E. Richardson	10002169-1	3808

7590 08/24/2005	EXAMINER
HEWLETT-PACKARD COMPANY	WALSH, JOHN B

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ART UNIT	PAPER NUMBER
2151	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/925,861	RICHARDSON, DAVID E.
	Examiner	**Art Unit**	
	John B. Walsh	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>RCE of 7/25/2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8,11-17 and 19-24* is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,11-17 and 19-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some *   c)☐ None of:

       1.☐ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____.

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
     Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1-8, 11-17 and 19-24 are rejected under 35 U.S.C. 102(e) as being anticipated by

U.S. Patent No. 6,571,285 to Groath et al.

As concerns claim 1, an electronic network comprising: a first electronic device (a first

electronic device on the network) associated with a second electronic device (a second electronic

device on the network), said association providing for the transfer of data between said first

electronic device and said second electronic device; a third electronic device (a third electronic

device on the network), wherein said third electronic device: loads a program (software for

monitoring; column 4, lines 12-15; embodiment is a software application; inherent that the

application is being run on the disclosed hardware (col. 3, line 52-col. 4, lines 10)) in said first

electronic device, wherein said program causes said first electronic device to: transmit data to

said second electronic device (data sent from device one to device two during monitoring of the

devices), measure the response time of data transfers between said first electronic device and

said second electronic device (during monitoring response time measured; column 1, line 21),

and transmit said response time to said third electronic device (third electronic device receives

data since it is doing the monitoring; the data needs to be sent back in some form so the user

doing the monitoring will be aware of an alarm, column 10, lines 26-30); compares the measured

response time (1004) to a preselected response time; and provides an indication (1006) if said

measured response time greater than said preselected response time.

As concerns claim 2, wherein said first electronic device is a computer (computer on the

network).

As concerns claim 3, wherein said third electronic device establishes said preselected

response time (user using the third electronic device establishes the preselected response time).

As concerns claim 4, wherein said third electronic device is a computer (column 3, lines

52-61).

As concerns claim 5, further comprising at least one fourth electronic device (a fourth

electronic device on the network) operatively connected between said first electronic device and

said second electronic device, and wherein said response time is a plurality of response times

between said first electronic device and said at least one fourth electronic device and between

said at least one fourth electronic device and said second electronic device (time to go from said

first electronic device to said second electronic device includes the time to go through the fourth

device since it can be between the two device; the network parameter selected to monitor the

particular response time).

As concerns claim 6, wherein said third electronic device measures response time of data

transfers between said first electronic device and said second electronic device and compares the

measured response time to said preselected response time at preselected time intervals (poll rate,

column 32, line 59).

As concerns claims 7 and 13, wherein said indication includes said measured response time (302).

As concerns claim 8, a computer network comprising: a first computer (a first computer on the network) associated with at least one first electronic device (a first electronic device on the network), the association providing for the transfer of data between said first computer and said at least one first electronic device; a second electronic device (a second electronic device on the network) connected to said first electronic device; said first computer having a computer-readable medium (figure 1) associated therewith, said computer-readable medium containing instructions for controlling said first computer to monitor said network by: loading a program (software for monitoring) in said first electronic device, wherein said program transmits data to said second electronic device (data sent from device one to device two during monitoring of the devices), measures the response time of data transfers between said first electronic device and said second electronic device (during monitoring response time measured; column 1, line 21), and transmits said response time to said computer (third electronic device receives data since it is doing the monitoring, the data needs to be sent back in some form so the user doing the monitoring will be aware of an alarm; column 10, lines 26-30); comparing the measured response time (1004) to a preselected response time; and providing an indication (1006) if said measured response time is greater than said preselected response time.

As concerns claim 11, wherein said computer-readable medium further comprises instructions for displaying a graphical representation of said network, wherein the portion said network causing said measured response time to exceed said preselected response time is

distinguishable from other portions of said representation of said network (abstract, conveyed graphically; also column 178, lines 5-7).

As concerns claim 12, wherein said instructions further measures said response time and compares said response time said preselected response time at a preselected time interval (1004).

As concerns claim 14, wherein said indication includes said preselected response time (1006; claim 6 and claim 8 (columns 178 and 179))

As concerns claim 15, further comprising at least one third electronic device (a second electronic device on the network) operatively connected between said first electronic device and said at least one second electronic device.

As concerns claim 16, wherein at least one third electronic device is a router (network has routers; column 31, line 20).

As concerns claim 17, a method for monitoring a computer network said method comprising: loading a program (software for monitoring) in a first electronic device (an electronic device on the network), said first electronic device being a network device, wherein said probe causes said first electronic device to transmit data to at least one second electronic device (data sent from device one to device two during monitoring of the devices), wherein said program measures the response time of data transfers between said first electronic device said at least one second electronic device (during monitoring response time measured; column 1, line 21), and wherein said program transmits said response time to a computer; establishing (1002) a preselected data response time between said first electronic device and at least one second electronic device; comparing (1004) said preselected data response time to said actual data

response time; and providing an indication (1006) said actual data response time is greater than

said preselected data response time.

As concerns claim 19, wherein said providing an indication comprises providing an

indication to said computer if said actual data response time is greater than said preselected data

response time (1006).

As concerns claim 20, wherein said at least one first electronic device is a router (network

has routers, column 31, line 20).

As concerns claim 21, wherein said one first electronic device is a computer (network has

computers such that the first electronic device is a computer).

As concerns claim 22, wherein said measuring and said comparing are performed at

preselected time intervals (poll rate, column 32, line 59).

As concerns claim 23, wherein said providing an indication further comprises providing

said measured response time (302).

As concerns claim 24, wherein said providing an indication further comprises providing

said preselected response time (1006, claim 6 and claim 8 (columns 178 and 179)).

Response to Arguments

3.   Applicant's arguments filed June 21, 2005 have been fully considered but they are not

persuasive. The applicant argues that Groath does not disclose loading a program. Groath

discloses a computer program executed on computer hardware (column 3, line 52-column 4, line

15; claim 5). It is inherent that the program is loaded onto the hardware in order to be executed.
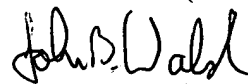
Conclusion

4.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Wednesday from 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John B. Walsh
Primary Examiner
Art Unit 2151